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ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

Report of the Sixth Committee

Rapporteur: Ms. Pascaline BOUM (Cameroon)

I. INTRODUCTION

1. The item entitled "Establishment of an international criminal court" was included in the provisional agenda of the fifty-first session of the General Assembly pursuant to Assembly resolution 50/46 of 11 December 1996.

2. At its 3rd plenary meeting, on 20 September 1996, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 26th to 30th and 48th to 50th meetings, on 28, 29 and 31 October and 1, 27 and 29 November 1996. The summary records of those meetings contain the views of the representatives who spoke during the Committee's consideration of the item (A/C.6/51/SR.26-30, and 48-50).

4. For its consideration of the item, the Committee had before it the report of the Preparatory Committee on the Establishment of an International Criminal Court,[1] which had held two sessions in 1996 pursuant to resolution 50/46. At the 26th meeting, on 28 October, the Chairman of the Preparatory Committee introduced the report.

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[1] Official Records of the General Assembly, Fifty-first Session, Supplement No. 22 (A/51/22).

II. CONSIDERATION OF DRAFT RESOLUTION A/C.6/51/L.10

5. At the 48th meeting, on 27 November, the representative of the Netherlands introduced a draft resolution entitled "Establishment of an international criminal court" (A/C.6/51/L.10), which had been proposed by the Chairman.

6. The Committee also had before it a statement (A/C.6/51/L.22) of the programme budget implications of the draft resolution, prepared by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly.

7. At its 50th meeting, on 29 November, the Committee adopted draft resolution A/C.6/51/L.10 without a vote (see para. 10).

8. The representative of China made a statement in explanation of position (see A/C.6/51/SR.50).

9. The United States of America did not participate in the decision and made a statement in explanation of position (ibid.).

III. RECOMMENDATION OF THE SIXTH COMMITTEE

10. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Establishment of an international criminal court

The General Assembly,

Recalling its resolutions 47/33 of 25 November 1992 and 48/31 of 9 December 1993,

Recalling also that the International Law Commission adopted a draft statute for an international criminal court[2] at its forty-sixth session and decided to recommend that an international conference of plenipotentiaries be convened to study the draft statute and to conclude a convention on the establishment of an international criminal court,[3]

Recalling further its resolution 49/53 of 9 December 1994, in which it decided to establish an ad hoc committee, open to all States Members of the United Nations or members of specialized agencies, to review the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, in the light of that review, to

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[2] Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), para. 91.

[3] Ibid., para. 90.

consider arrangements for the convening of an international conference of plenipotentiaries,

Recalling its resolution 50/46 of 11 December 1995, in which it decided, in the light of the report of the Ad Hoc Committee on the Establishment of an International Criminal Court,[4] to establish a preparatory committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries, and also decided that the work of the Preparatory Committee should be based on the draft statute prepared by the International Law Commission and should take into account the report of the Ad Hoc Committee and the written comments submitted by States to the Secretary-General on the draft statute for an international criminal court pursuant to paragraph 4 of General Assembly resolution 49/53 and, as appropriate, contributions of relevant organizations,

Noting that the Preparatory Committee continued the discussion of the major substantive and administrative issues arising out of the draft statute and initiated consideration of draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court,

Noting also that major substantive and administrative issues remain to be resolved,

Noting further that the Preparatory Committee, in the light of the progress made, and deeply aware of the commitment of the international community to the establishment of an international criminal court, recommended that the General Assembly reaffirm the mandate of the Preparatory Committee and give further directions to it,

Recalling that in its resolution 50/46 it resolved to decide, in the light of the report of the Preparatory Committee, on the convening of an international conference of plenipotentiaries to finalize and adopt a convention on the establishment of an international criminal court, including on the timing and duration of the conference,

Noting that the Preparatory Committee, recognizing that this is a matter for the General Assembly, and on the basis of its scheme of work, considered that it is realistic to regard the holding of a diplomatic conference of plenipotentiaries in 1998 as feasible,

Aware of the necessity to maintain some flexibility in the organization of the future work in order to ensure the success of the conference of plenipotentiaries,

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[4] Ibid., Fiftieth Session, Supplement No. 22 (A/50/22).

Expressing deep appreciation for the renewed offer of the Government of Italy to host a conference on the establishment of an international criminal court in June 1998,

1. Takes note of the report of the Preparatory Committee on the Establishment of an International Criminal Court,[5] including the recommendations contained therein, and expresses its appreciation to the Preparatory Committee for the useful work done and the progress made in fulfilling its mandate;

2. Takes note also of the various views of Governments expressed during the consideration of the report of the Preparatory Committee in the Sixth Committee during the fifty-first session of the General Assembly;

3. Decides to reaffirm the mandate of the Preparatory Committee and directs it to proceed in accordance with paragraph 368 of its report;[6]

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[5] Ibid., Fifty-first Session, Supplement No. 22 (A/51/22).

[6] Paragraph 368 of the report (A/51/22, vol. I) reads as follows:

"The Preparatory Committee wishes to emphasize the usefulness of its discussions and the cooperative spirit in which the debates took place. In light of the progress made and with an awareness of the commitment of the international community to the establishment of an international criminal court, the Preparatory Committee recommends that the General Assembly reaffirm the mandate of the Preparatory Committee and give the following directions to it:

"(a) To meet three or four times up to a total of nine weeks before the diplomatic conference. To organize its work so that it will be finalized in April 1998 and so as to allow the widest possible participation of States. The work should be done in the form of open-ended working groups, concentrating on the negotiation of proposals with a view to producing a draft consolidated text of a convention to be submitted to the diplomatic conference. No simultaneous meetings of the working groups shall be held. The working methods should be fully transparent and should be by general agreement in order to secure the universality of the convention. Submission of reports on its debates will not be required. Interpretation and translation services will be available to the working groups;

"(b) To deal with the following:

(i) Definition and elements of crimes;

(ii) Principles of criminal law and penalties;

(iii) Organization of the Court;

(iv) Procedures;

(v) Complementarity and trigger mechanism;

(vi) Cooperation with States;

(vii) Establishment of the International Criminal Court and its relationship with the United Nations;

(viii) Final clauses and financial matters;

(ix) Other matters."

4. Also decides that the Preparatory Committee will meet from 11 to 21 February, from 4 to 15 August and from 1 to 12 December 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a widely acceptable consolidated text of a convention, to be submitted to the diplomatic conference, and requests the Secretary-General to provide the Preparatory Committee with the necessary facilities for the performance of its work;

5. Further decides that a diplomatic conference of plenipotentiaries will be held in 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court;

6. Urges participation in the Preparatory Committee by the largest number of States so as to promote universal support for an international criminal court;

7. Requests the Secretary-General to establish a special fund for the participation of the least developed countries in the work of the Preparatory Committee and in the diplomatic conference of plenipotentiaries, and calls upon States to contribute voluntarily to that special fund;

8. Decides to include in the provisional agenda of its fifty-second session the item entitled "Establishment of an international criminal court", in order to make the necessary arrangements for the diplomatic conference of plenipotentiaries to be held in 1998, unless the General Assembly decides otherwise in view of relevant circumstances.